

ENTERED

March 01, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**CLIFFORD POLLARD TURNER
(TDCJ # 00309400),

Plaintiff,

vs.

SECRETARY, DEPARTMENT OF
CORRECTIONS,

Defendant.

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CIVIL ACTION NO. H-23-114

MEMORANDUM OPINION DISMISSING CASE

The plaintiff, Clifford Pollard Turner (TDCJ # 00309400), filed an action under 42 U.S.C. § 1983 against the Secretary of the Department of Corrections.¹ (Docket Entry No. 1). The complaint appears to be incomplete, it contains no substantive allegations of any kind, and it does not identify any relief that Turner is seeking. (*Id.*). The court ordered Turner to file an amended complaint using the approved form for prisoner actions under § 1983. (Docket Entry No. 7). The court also notified Turner that he must either pay the \$402.00 filing fee for a civil rights action or file a properly supported motion to proceed without prepaying the filing fee. (*Id.*). The court provided Turner with the appropriate forms and warned him that failure to timely comply with the court's order could result in dismissal of his action without further notice under Federal Rule of Civil Procedure 41(b).

To date, Turner has not filed an amended complaint as ordered, and he has neither paid the filing fee nor filed a motion for leave to proceed without prepaying the filing fee. His time to do

¹Turner originally filed his complaint in the United States District Court for the Southern District of Florida, Miami Division. (Docket Entry No. 1, p. 1). That court transferred the case to this court shortly after it was filed. (Docket Entry No. 4).

so under the court's order has expired. Turner's failure to pursue this action forces the court to conclude that he lacks due diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (a district court may dismiss an action on its own for failure to prosecute or to comply with any court order).

Turner is advised that he may seek relief from this order under Federal Rule of Civil Procedure 60(b) if he can show good cause for failing to comply with the court's order and the local rules. Any motion under Rule 60(b) must be accompanied by an amended complaint on the proper form and either the filing fee of \$402.00 or a properly supported motion to proceed without prepaying the filing fee, including a certified copy of his inmate trust fund account statement.

Turner's complaint, (Docket Entry No. 1), is dismissed without prejudice for want of prosecution.

SIGNED on February 28, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
United States District Judge